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**From:**

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**Cc:**

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Here is material prepared by      for use in the 6707A template.

### **Law for Use in NOPAs Imposing the Section 6707A Penalty for Listed Transactions**

*Look through the headings in bold below to determine which version of the regulations applies to the transaction the penalty is based upon and include only that version in the NOPA. The version that applies may depend upon when the transaction was entered into or when a return was filed. In some instances, the taxpayer may choose to rely upon a certain version of the regulations. Prior to TD 9000, the regulations applied only to corporations. Optional language is in brackets and highlighted. Use the highlighted language when it is relevant to the case.*

#### **For Transactions Entered Into On Or After August 3, 2007 and Transactions Of Interest Entered Into On Or After November 2, 2006 (TD 9350)**

All references to Treas. Reg. § 1.6011-4 are to that regulation as modified by TD 9350, 2007-38 I.R.B. 607.

Every taxpayer that has participated, as described in § 1.6011-4(c)(3), in a reportable transaction within the meaning of § 1.6011-4(b) and who is required to file a tax return must file within the time prescribed in § 1.6011-4(e) a disclosure statement in the form prescribed by § 1.6011-4(d). Treas. Reg. § 1.6011-4(a).

A reportable transaction is a transaction described in § 1.6011-4(b)(2) through (7). The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan. Treas. Reg. § 1.6011-4(b)(1).

A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction. Treas. Reg. § 1.6011-4(b)(2).

A taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction

under § 1.6011-4(b)(2). A taxpayer also has participated in a listed transaction if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences or a tax strategy described in published guidance that lists a transaction under § 1.6011-4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance also may identify types or classes of persons that will not be treated as participants in a listed transaction. Treas. Reg. § 1.6011-4(c)(3)(i)(A).

The term substantially similar includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a listed transaction even though it involves different entities or uses different Internal Revenue Code provisions. Treas. Reg. § 1.6011-4(c)(4).

The disclosure statement for a reportable transaction, Form 8886 "Reportable Transaction Disclosure Statement" (or successor form), must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. In addition, a disclosure statement for a reportable transaction must be attached to each amended return that reflects a taxpayer's participation in a reportable transaction. A copy of the disclosure statement must be sent to OTSA at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction. [If a reportable transaction results in a loss which is carried back to a prior year, the disclosure statement for the reportable transaction must be attached to the taxpayer's application for tentative refund or amended tax return for that prior year. In the case of a taxpayer that is a partner in a partnership, a shareholder in an S corporation, or a beneficiary of a trust, the disclosure statement for a reportable transaction must be attached to the partnership, S corporation, or trust's tax return for each taxable year in which the partnership, S corporation, or trust participates in the transaction under the rules of § 1.6011-4(c)(3)(i). If a taxpayer who is a partner in a partnership, a shareholder in an S corporation, or a beneficiary of a trust receives a timely Schedule K-1 less than 10 calendar days before the due date of the taxpayer's return (including extensions) and, based on receipt of the timely Schedule K-1, the taxpayer determines that the taxpayer participated in a reportable transaction within the meaning of § 1.6011-4(c)(3), the disclosure statement will not be considered late if the taxpayer discloses the reportable transaction by filing a disclosure statement with OTSA within 60 calendar days after the due date of the taxpayer's return (including extensions).] Treas. Reg. § 1.6011-4(e)(1).

[In general, if a transaction becomes a listed transaction or a transaction of interest after the filing of a taxpayer's tax return (including an amended return) reflecting the taxpayer's participation in the listed transaction or transaction of interest and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction or transaction of interest, then a disclosure statement must be filed, regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction or a transaction of interest, with OTSA within 90 calendar days after the date on which the transaction became a listed transaction or a transaction of interest. Treas. Reg. § 1.6011-4(e)(2)(i).]

**For Transactions Entered Into On Or After December 29, 2003 (But Taxpayers May Rely On These Regulations For Transactions Entered Into On Or After January 1, 2003, and Before December 29, 2003) (TD 9108 and TD 9295)**

All references to Treas. Reg. § 1.6011-4 are to that regulation as modified by TD 9108, 2004-1, C.B. 429, or as modified by TD 9295, 2006-49 I.R.B. 1030. [*Cite to the applicable TD.*]

Every taxpayer that has participated, as described in § 1.6011-4(c)(3), in a reportable transaction within the meaning of § 1.6011-4(b) and who is required to file a tax return must attach to its return for the taxable year described in § 1.6011-4(e) a disclosure statement in the form prescribed by § 1.6011-4(d). Treas. Reg. § 1.6011-4(a).

A reportable transaction is a transaction described in § 1.6011-4(b)(2) through (7). The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan. There are six categories of reportable transactions: listed transactions, confidential transactions, transactions with contractual protection, loss transactions, transactions with a significant book-tax difference, and transactions involving a brief asset holding period. Treas. Reg. § 1.6011-4(b)(1).

A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction. Treas. Reg. § 1.6011-4(b)(2).

A taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under § 1.6011-4(b)(2). A taxpayer also has participated in a listed transaction if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences or a tax strategy described in published guidance that lists a transaction under § 1.6011-4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Treas. Reg. § 1.6011-4(c)(3)(i)(A).

The term substantially similar includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. Treas. Reg. § 1.6011-4(c)(4).

The disclosure statement for a reportable transaction, Form 8886 "Reportable Transaction Disclosure Statement" (or successor form), must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. In addition, the disclosure statement for a reportable transaction must be attached to each amended return that reflects a taxpayer's participation in a reportable transaction. A copy of the disclosure statement must be sent to OTSA at the same time that any disclosure statement is first filed by the taxpayer. [If a reportable transaction results in a loss which is carried back to a prior year, the disclosure statement for the reportable transaction must be attached to the taxpayer's application for tentative refund or amended tax return for that prior year. In the case of a taxpayer that is a partnership or S corporation, the disclosure statement for a reportable transaction must be attached to the partnership's or S corporation's tax return for each taxable year in which the partnership or S corporation participates in the transaction under the rules of § 1.6011-4(c)(3)(i).] Treas. Reg. § 1.6011-4(e)(1).

[If a transaction becomes a listed transaction after the filing of a taxpayer's tax return (including an amended return) reflecting either tax consequences or a tax strategy described in the published guidance listing the transaction (or a tax benefit derived from tax consequences or a

tax strategy described in the published guidance listing the transaction) and before the end of the period of limitations for the final return (whether or not already filed) reflecting the tax consequences, tax strategy, or tax benefit, then a disclosure statement must be filed as an attachment to the taxpayer's tax return next filed after the date the transaction is listed regardless of whether the taxpayer participated in the transaction in that year. Treas. Reg. § 1.6011-4(e)(2)(i).]

**For Transactions Entered Into On Or After February 28, 2003 (But Taxpayers May Rely on These Regulations For Transactions Entered Into On Or After January 1, 2003 and Before February 28, 2003) (TD 9046)**

All references to § 1.6011-4 are to that regulation as modified by TD 9046, 2003-1 C.B. 614.

Every taxpayer that has participated, as described in § 1.6011-4(c)(3), in a reportable transaction within the meaning of § 1.6011-4(b) and who is required to file a tax return must attach to its return for the taxable year described in § 1.6011-4(e) a disclosure statement in the form prescribed by § 1.6011-4(d). Treas. Reg. § 1.6011-4(a).

A reportable transaction is a transaction described in § 1.6011-4(b)(2) through (7). The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan. There are six categories of reportable transactions: listed transactions, confidential transactions, transactions with contractual protection, loss transactions, transactions with a significant book-tax difference, and transactions involving a brief asset holding period. Treas. Reg. § 1.6011-4(b)(1).

A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction. Treas. Reg. § 1.6011-4(b)(2).

A taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under § 1.6011-4 (b)(2). A taxpayer also has participated in a listed transaction if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences or a tax strategy described in published guidance that lists a transaction under § 1.6011-4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Treas. Reg. § 1.6011-4(c)(3)(i)(A).

The term substantially similar includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. Treas. Reg. § 1.6011-4(c)(4).

The disclosure statement for a reportable transaction, Form 8886 "Reportable Transaction Disclosure Statement" (or successor form), must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. In addition, a copy of the disclosure statement must be sent to OTSA at the same time that any disclosure statement is first filed with the taxpayer's tax return. ]If a reportable transaction results in a loss which is carried back to a prior year, the disclosure statement for the reportable transaction must be attached to the taxpayer's application for tentative refund or amended tax return for that prior year. In the case of a taxpayer that is a partnership or S corporation, the disclosure statement for a reportable transaction must be attached to the partnership's or S corporation's

tax return for each taxable year in which the partnership or S corporation participates in the transaction under the rules of § 1.6011-4(c)(3)(i).] Treas. Reg. § 1.6011-4(e)(1).

[If a transaction becomes a listed transaction after the filing of the taxpayer's final tax return reflecting either tax consequences or a tax strategy described in the published guidance listing the transaction (or a tax benefit derived from tax consequences or a tax strategy described in the published guidance listing the transaction) and before the end of the statute of limitations period for that return, then a disclosure statement must be filed as an attachment to the taxpayer's tax return next filed after the date the transaction is listed. Treas. Reg. § 1.6011-4(e)(2)(i). ]

**For Transactions Entered Into On Or After January 1, 2003 (TD 9017)**

*This language will apply only in limited circumstances (see TD 9046).*

All references to Treas. Reg. § 1.6011-4T are to that regulation as modified by TD 9017, 2002-2 C.B. 815.

Every taxpayer that has participated, directly or indirectly, in a reportable transaction within the meaning of § 1.6011-4T(b) must attach to its return for the taxable year described in § 1.6011-4T(e) a disclosure statement in the form prescribed by § 1.6011-4T(d). Treas. Reg. § 1.6011-4T(a).

A reportable transaction is a transaction described in § 1.6011-4T(b)(2) through (7). The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan, and any series of substantially similar transactions entered into in the same taxable year. There are six categories of reportable transactions: listed transactions, confidential transactions, transactions with contractual protection, loss transactions, transactions with a significant book-tax difference, and transactions involving a brief asset holding period. Treas. Reg. § 1.6011-4T(b)(1).

A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction. Treas. Reg. § 1.6011-4T(b)(2).

A taxpayer will have indirectly participated in a reportable transaction if the taxpayer's Federal tax liability is affected (or in the case of a partnership or an S corporation, if a partner's or shareholder's Federal tax liability is reasonably expected to be affected) by the transaction even if the taxpayer is not a direct party to the transaction (e.g., the taxpayer participates as a partner in a partnership, as a shareholder in an S corporation, or through a trust or a controlled entity). Moreover, a taxpayer will have indirectly participated in a reportable transaction if the taxpayer knows or has reason to know that the tax benefits claimed from the taxpayer's transaction are derived from a reportable transaction. Treas. Reg. § 1.6011-4T(c)(3)(i).

The term substantially similar includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. Treas. Reg. § 1.6011-4T(c)(4).

The disclosure statement for a reportable transaction, Form 8886 "Reportable Transaction Disclosure Statement" (or successor form), must be attached to the taxpayer's Federal income tax return for each taxable year for which the taxpayer's Federal income tax liability is affected by the taxpayer's participation in the transaction. In addition, a copy of the disclosure statement must be sent to OTSA at the same time that any disclosure statement is first filed with the taxpayer's Federal income tax return. [If a reportable transaction results in a loss which is carried back to a prior year, the disclosure statement for the reportable transaction must be attached to the taxpayer's application for tentative refund or amended Federal income tax return for that prior year. In the case of a taxpayer that is a partnership or S corporation, the disclosure statement for a reportable transaction must be attached to the partnership's or S corporation's Federal income tax return for each taxable year ending with or within the taxable year of any partner or shareholder whose income tax liability is affected or is reasonably expected to be affected by the partnership's or S corporation's participation in the transaction. If a transaction becomes a reportable transaction (e.g., the transaction subsequently becomes one identified in published guidance as a listed transaction described in § 1.6011-4T(b)(2), or there is a change in facts affecting the expected Federal income tax effect of the transaction such that the transaction is reportable under any of § 1.6011-4T(b)(5) through (7)) on or after the date the taxpayer has filed the return for the first taxable year for which the transaction affected the taxpayer's or a partner's or a shareholder's Federal income tax liability, the disclosure statement must be filed as an attachment to the taxpayer's Federal income tax return next filed after the date the transaction becomes a reportable transaction (whether or not the transaction affects the taxpayer's or any partner's or shareholder's Federal income tax liability for that year).] Treas. Reg. § 1.6011-4T(e)(1).

**For Transactions Entered Into On Or After January 1, 2001, Unless the Transaction Is Reported On A Tax Return Of The Taxpayer That Is Filed On Or Before June 14, 2002 (TD 9000)**

*Prior to this version, the regulations applied only to corporations.*

All references to Treas. Reg. § 1.6011-4T are to that regulation as modified by TD 9000, 2002-2 C.B. 87.

Every corporate taxpayer that is required to file a return for a taxable year with respect to a tax imposed under §§ 11, 594, 801, or 831 and that has participated, directly or indirectly, in a reportable transaction within the meaning of § 1.6011-4T(b) must attach to its return for the taxable year described in § 1.6011-4T(d) a disclosure statement in the form prescribed by § 1.6011-4T(c). Every individual, trust, partnership, and S corporation that has participated, directly or indirectly, in a reportable transaction within the meaning of § 1.6011-4T(b)(2) must attach to its return for the taxable year described in § 1.6011-4T(d) a disclosure statement in the form prescribed by § 1.6011-4T(c). For this purpose, a taxpayer will have indirectly participated in a reportable transaction if the taxpayer's Federal income tax liability is affected (or in the case of a partnership or an S corporation, if a partner's or shareholder's Federal income tax liability is reasonably expected to be affected) by the transaction even if the taxpayer is not a direct party to the transaction (e.g., the taxpayer participates as a partner in a partnership, as a shareholder in an S corporation, or through a controlled entity). Moreover, a taxpayer will have indirectly participated in a reportable transaction if the taxpayer knows or has reason to know that the tax benefits claimed from the taxpayer's transaction are derived from a reportable transaction. Treas. Reg. § 1.6011-4T(a)(1).

For purposes of § 1.6011-4T(b)(3) and (4), the term taxpayer means a corporation required to file a return under §§ 11, 594, 801, or 831. For all other purposes of



§ 1.6011-4T, the term taxpayer also includes an individual, trust, partnership, or S corporation. Treas. Reg. § 1.6011-4T(a)(3).

A reportable transaction is either a transaction that is described in § 1.6011-4T(b)(2), or is a transaction that is described in § 1.6011-4T(b)(3) and that meets the projected tax effect test in § 1.6011-4T(b)(4). The term transaction includes all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, and includes any series of related steps carried out as part of a prearranged plan and any series of substantially similar transactions entered into in the same taxable year. Treas. Reg. § 1.6011-4T(b)(1).

For purposes of § 1.6011-4T, the term substantially similar includes any transaction that is expected to obtain the same or similar types of tax benefits and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion concluding that the tax benefits from the taxpayer's transaction are allowable is not relevant to the determination of whether the taxpayer's transaction is the same as or substantially similar to a listed transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. Treas. Reg. § 1.6011-4T(b)(1)(i).

A transaction is described in § 1.6011-4T(b)(2) if the transaction is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction for purposes of § 6011. However, a listed transaction is not treated as a reportable transaction if it has affected the taxpayer's Federal income tax liability as reported on any tax return filed on or before February 28, 2000. Treas. Reg. § 1.6011-4T(b)(2).

The disclosure statement, as described in § 1.6011-4T(c), for a reportable transaction must be attached to the taxpayer's Federal income tax return for each taxable year for which the taxpayer's Federal income tax liability is affected by the taxpayer's participation in the transaction. [In the case of a taxpayer that is a partnership or an S corporation, the disclosure statement for a listed transaction must be attached to the taxpayer's Federal income tax return for each taxable year ending with or within the taxable year of any partner or shareholder whose income tax liability is affected or is reasonably expected to be affected by the partnership's or the S corporation's participation in the transaction.] In addition, at the same time that any disclosure statement is first attached to the taxpayer's Federal income tax return, the taxpayer must file a copy of that disclosure statement with the Office of Tax Shelter Analysis (OTSA). [If a transaction becomes a reportable transaction (e.g., the transaction subsequently becomes one identified in published guidance as a listed transaction described in § 1.6011-4T(b)(2), or there is a change in facts affecting the expected Federal income tax effect of the transaction) on or after the date the taxpayer has filed the return for the first taxable year for which the transaction affected the taxpayer's or a partner's or a shareholder's Federal income tax liability, the disclosure statement must be filed as an attachment to the taxpayer's Federal income tax return next filed after the date the transaction becomes a reportable transaction (whether or not the transaction affects the taxpayer's or any partner's or shareholder's Federal income tax liability for that year). If a disclosure statement is required as an attachment to a Federal income tax return that is filed after June 14, 2002, but on or before 180 days after June 14, 2002, the taxpayer must either attach the disclosure statement to the return, or file the disclosure statement as an amendment to the return no later than 180 days after June 14, 2002.] Treas. Reg. § 1.6011-4T(d)(1).

**For Federal Corporate Income Tax Returns Filed After August 11, 2000 (TD 8896 and TD 8961)**

All references to Treas. Reg. § 1.6011-4T are to that regulation as modified by TD 8896, 2000-2 C.B. 249, or as modified by TD 8961, 2001-2 C.B. 194. [*Cite to the applicable TD.*]

Every taxpayer that is required to file a return for a taxable year with respect to a tax imposed under §§ 11, 594, 801, or 831 and that has participated, directly or indirectly, in a reportable transaction within the meaning of § 1.6011-4T(b) must attach to its return for the taxable year described in § 1.6011-4T(d) a disclosure statement in the form prescribed by § 1.6011-4T(c). For this purpose, a taxpayer will have indirectly participated in a transaction if its Federal income tax liability is affected by the transaction even if it is not a direct party to the transaction (e.g., it participates through a partnership or through a controlled entity). Treas. Reg. § 1.6011-4T(a).

A reportable transaction is a transaction that is described in either § 1.6011-4T(b)(2) or (3) and that meets the projected tax effect test in § 1.6011-4T(b)(4). The term transaction includes all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, and includes any series of related steps carried out as part of a prearranged plan and any series of substantially similar transactions entered into in the same taxable year. Treas. Reg. § 1.6011-4T(b)(1).

A transaction is described in § 1.6011-4T(b)(2) if the transaction is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and has identified by notice, regulation, or other form of published guidance as a listed transaction for purposes of § 6011. However, a listed transaction is not treated as a reportable transaction if it has affected the taxpayer's Federal income tax liability as reported on any tax return filed on or before February 28, 2000. Treas. Reg. § 1.6011-4T(b)(2).

A transaction described in § 1.6011-4T(b)(2) meets the projected tax effect test if, at the time the taxpayer enters into the transaction or at any time thereafter, the taxpayer reasonably estimates that the transaction will reduce the taxpayer's Federal income tax liability by more than \$1 million in any single taxable year or by a total of more than \$2 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability. Treas. Reg. § 1.6011-4T(b)(4)(i).

The disclosure statement, as described in § 1.6011-4T(c), for a reportable transaction shall be attached to the taxpayer's Federal corporate income tax return for each taxable year for which the taxpayer's Federal income tax liability is affected by its participation in the transaction. In addition, at the same time that the disclosure statement is first attached to the taxpayer's Federal income tax return, a copy of that disclosure statement must be sent to the IRS Large and Mid-Size Business Division. **[If a**



transaction becomes a reportable transaction on or after the date the taxpayer has filed its return for the first taxable year for which the transaction affected the taxpayer's Federal income tax liability (e.g., there is a change in facts affecting the expected Federal income tax effect of the transaction, or the transaction subsequently becomes one identified in published guidance as a listed transaction described in § 1.6011-4T(b)(2)), the disclosure statement shall be filed as an attachment to the taxpayer's Federal corporate income tax return next filed after the date the transaction becomes a reportable transaction. If a disclosure statement is required as an attachment to a Federal corporate income tax return that is filed earlier than 180 days after February 28, 2000, the taxpayer may either attach the disclosure statement to the return, or file the disclosure statement as an amendment to the return no later than 180 days after February 28, 2000.] Treas. Reg. § 1.6011-4T(d)(1).

**For Federal Corporate Income Tax Returns Filed After February 28, 2000 (TD 8877)**

All references to Treas. Reg. § 1.6011-4T are to that regulation as published in TD 8877, 2001-1 C.B. 747.

Every taxpayer that is required to file a return for a taxable year with respect to a tax imposed under § 11 and that has participated, directly or indirectly, in a reportable transaction within the meaning of § 1.6011-4T(b) must attach to its return for the taxable year described in § 1.6011-4T(d) a disclosure statement in the form prescribed by § 1.6011-4T(c). For this purpose, a taxpayer will have indirectly participated in a transaction if its Federal income tax liability is affected by the transaction even if it is not a direct party to the transaction (e.g., it participates through a partnership or through a controlled entity). Treas. Reg. § 1.6011-4T(a).

A reportable transaction is a transaction that is described in either § 1.6011-4T(b)(2) or (3) and that meets the projected tax effect test in § 1.6011-4T(b)(4). The term transaction includes all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, and includes any series of related steps carried out as part of a prearranged plan and any series of substantially similar transactions entered into in the same taxable year. Treas. Reg. § 1.6011-4T(b)(1).

A transaction is described in § 1.6011-4T(b)(2) if the transaction is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and has been identified by notice, regulation, or other form of published guidance as a listed transaction for purposes of § 6011. However, a listed transaction is not treated as a reportable transaction if it has affected the taxpayer's Federal income tax liability as reported on any tax return filed on or before February 28, 2000. Treas. Reg. § 1.6011-4T(b)(2).

A transaction described in § 1.6011-4T(b)(2) meets the projected tax effect test if, at the time the taxpayer enters into the transaction or at any time thereafter, the taxpayer

reasonably estimates that the transaction will reduce the taxpayer's Federal income tax liability by more than \$1 million in any single taxable year or by a total of more than \$2 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability. Treas. Reg. § 1.6011-4T(b)(4)(i).

The disclosure statement, as described in § 1.6011-4T(c), for a reportable transaction shall be attached to the taxpayer's Federal corporate income tax return for each taxable year for which the taxpayer's Federal income tax liability is affected by its participation in the transaction. In addition, at the same time that the disclosure statement is first attached to the taxpayer's Federal income tax return, a copy of that disclosure statement must be sent to the IRS Large and Mid-Size Business Division. [If a transaction becomes a reportable transaction on or after the date the taxpayer has filed its return for the first taxable year for which the transaction affected the taxpayer's Federal income tax liability (e.g., there is a change in facts affecting the expected Federal income tax effect of the transaction, or the transaction subsequently becomes one identified in published guidance as a listed transaction described in § 1.6011-4T(b)(2)), the disclosure statement shall be filed as an attachment to the taxpayer's Federal corporate income tax return next filed after the date the transaction becomes a reportable transaction. If a disclosure statement is required as an attachment to a Federal corporate income tax return that is filed earlier than 180 days after February 28, 2000, the taxpayer may either attach the disclosure statement to the return, or file the disclosure statement as an amendment to the return no later than 180 days after February 28, 2000.] Treas. Reg. § 1.6011-4T(d)(1).